

PINNOCK & WAKEFIELD

A Professional Corporation
David C. Wakefield, Esq.
Theodore A. Pinnock, Esq.
Michelle L. Wakefield, Esq.
3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: 619.858.3671
Facsimile: 619.858.3646

Bar #: 185736
Bar #: 153434
Bar #: 200424

Attorneys for Plaintiff

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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT MCCARTHY,

Plaintiff,

v.

KMAN PARTNERS a.k.a. K.M.A.N.
PARTNERS d.b.a. QUALITY INN &
SUITES; ASHOK PATEL, General
Partner of KMAN PARTNERS
a.k.a. K.M.A.N. PARTNERS;
AMIN-CONCORD, LLC; RICHMOND
HOSPITALITY INVESTMENTS,
INC.; ROSHAN INVESTMENTS,
LLC; And DOES 1 THROUGH 10,
Inclusive

Defendants.

Case No. **C-06 12617**

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

NEGLIGENCE

[CIVIL CODE 1714(a), 2338,
3333; EVIDENCE CODE 669(a)]

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b)]

INTRODUCTION

Plaintiff ROBERT MCCARTHY herein complain, by filing this
Civil Complaint in accordance with rule 8 of the Federal Rules of
Civil Procedure in the Judicial District of the United States
District Court of the Northern District of California, that
Defendants have in the past, and presently are, engaging in

1 discriminatory practices against individuals with disabilities,
2 specifically including minorities with disabilities. Plaintiff
3 alleges this civil action and others substantial similar thereto
4 are necessary to compel access compliance because empirical
5 research on the effectiveness of Title III of the Americans with
6 Disabilities Act indicates this Title has failed to achieve full
7 and equal access simply by the executive branch of the Federal
8 Government funding and promoting voluntary compliance efforts.
9 Further, empirical research shows when individuals with
10 disabilities give actual notice of potential access problems to
11 places of public accommodation without a federal civil rights
12 action, the public accommodations do not remove the access
13 barriers. Therefore, Plaintiff makes the following allegations in
14 this federal civil rights action:

15 JURISDICTION AND VENUE

16 1. The federal jurisdiction of this action is based on the
17 Americans with Disabilities Act, 42 United States Code 12101-
18 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
19 District of the United States District Court of the Northern
20 District of California is in accordance with 28 U.S.C. § 1391(b)
21 because a substantial part of Plaintiff's claims arose within the
22 Judicial District of the United States District Court of the
23 Northern District of California.

24 INTRADISTRICT ASSIGNMENT

25 2. Pursuant to Local Rule 3-2, this action should be assigned to
26 the San Francisco Division as the property that is the subject of
27 this action is situated in Contra Costa County.
28

SUPPLEMENTAL JURISDICTION

3. The Judicial District of the United States District Court of the Northern District of California has supplemental jurisdiction over the state claims as alleged in this Complaint pursuant to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper in this action is because all the causes of action or claims derived from federal law and those arising under state law, as herein alleged, arose from common nucleus of operative facts. The common nucleus of operative facts, include, but are not limited to, the incidents where Plaintiff was denied full and equal access to Defendants' facilities, goods, and/or services in violation of both federal and state laws when Plaintiff ROBERT MCCARTHY attempted to enter, use, and/or exit Defendants' facilities as described below within this Complaint. Further, due to this denial of full and equal access, Plaintiff ROBERT MCCARTHY and other persons with disabilities were injured. Based upon the said allegations, the state actions, as stated herein, are so related to the federal actions that they form part of the same case or controversy and the actions would ordinarily be expected to be tried in one judicial proceeding.

NAMED DEFENDANTS AND NAMED PLAINTIFF

4. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Defendant KMAN PARTNERS a.k.a. K.M.A.N. PARTNERS d.b.a. QUALITY INN & SUITES is located at 915 West Cutting Boulevard, Point Richmond, California, 94804-2450. Plaintiff is informed and

believes and thereon alleges that Defendants KMAN PARTNERS a.k.a. K.M.A.N. PARTNERS and ASHOK PATEL, General Partner of KMAN PARTNERS a.k.a. K.M.A.N. PARTNERS are the owners, operators, franchisees, and/or lessors of the QUALITY INN & SUITES that is the subject of this Civil Complaint. Defendants KMAN PARTNERS a.k.a. K.M.A.N. PARTNERS and ASHOK PATEL, General Partner of KMAN PARTNERS a.k.a. K.M.A.N. PARTNERS are located at 4258 Cesar Chavez Street, San Francisco, California, 94131. Plaintiff is informed and believes and thereon alleges that Defendants AMIN-CONCORD, LLC; RICHMOND HOSPITALITY INVESTMENTS, INC.; and ROSHAN INVESTMENTS, LLC, are the owners, operators, and/or lessors of the real property located at 915 West Cutting Boulevard, Point Richmond, California, 94804-2450, Assessor Parcel Number 550-012-006. Defendant AMIN-CONCORD, LLC, is located at 220 North Bayshore Boulevard, San Mateo, California, 94401. Defendant RICHMOND HOSPITALITY INVESTMENTS, INC., is located at 25623 Amberleaf Road, Torrance, California, 90505. Defendant ROSHAN INVESTMENTS, LLC, is located at 610 Geary Street, San Francisco, California, 94102.

5. The words Plaintiff and Plaintiffs as used herein specifically include ROBERT MCCARTHY and persons associated with ROBERT MCCARTHY who accompanied him to Defendants' facilities.

6. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of KMAN PARTNERS a.k.a. K.M.A.N. PARTNERS d.b.a. QUALITY INN & SUITES; ASHOK PATEL, General Partner of KMAN PARTNERS a.k.a. K.M.A.N. PARTNERS; AMIN-CONCORD, LLC; RICHMOND HOSPITALITY INVESTMENTS,

1 INC.; and/or ROSHAN INVESTMENTS, LLC. Plaintiff is ignorant of
2 the true names and capacities of Defendants sued herein as Does 1
3 through 10, inclusive, and therefore sue these Defendants by such
4 fictitious names. Plaintiff will pray leave of the court to amend
5 this complaint to allege the true names and capacities of the Does
6 when ascertained.

7 7. Plaintiff is informed and believes, and thereon alleges, that
8 Defendants and each of them herein were, at all times relevant to
9 the action, the owner, lessor, lessee, franchiser, franchisee,
10 general partner, limited partner, agent, employee, representing
11 partner, or joint venturer of the remaining Defendants and were
12 acting within the course and scope of that relationship.

13 Plaintiff is further informed and believes, and thereon alleges,
14 that each of the Defendants herein gave consent to, ratified,
15 and/or authorized the acts alleged herein to each of the remaining
16 Defendants.
17

18
19 CONCISE SET OF FACTS

20 8. Plaintiff ROBERT MCCARTHY has an impairment and due to this
21 impairment he has learned to successfully operate a wheelchair.

22 9. On January 19, 2006, and on January 20, 2006, Plaintiff
23 ROBERT MCCARTHY went to Defendants' KMAN PARTNERS a.k.a. K.M.A.N.
24 PARTNERS d.b.a. QUALITY INN & SUITES (hereinafter "QUALITY INN &
25 SUITES") facilities to utilize their goods and/or services. When
26 Plaintiff ROBERT MCCARTHY patronized Defendants' facilities, he
27 was unable to use and/or had difficulty using the public
28 accommodations' disabled parking, exterior path of travel, curb

1 ramp, lobby entrance, counter, guestroom entrance, guestroom
2 bathroom, guestroom interior path of travel, guestroom
3 curtain/lamp operable controls, guestroom desk, guestroom amenity,
4 guest laundry, and pool facilities at Defendants' QUALITY INN &
5 SUITES business establishment because they failed to comply with
6 ADA Access Guidelines For Buildings and Facilities (hereafter
7 referred to as "ADAAG") and/or California's Title 24 Building Code
8 Requirements. Defendants failed to remove access barriers within
9 the disabled parking, exterior path of travel, curb ramp, lobby
10 entrance, counter, guestroom entrance, guestroom bathroom,
11 guestroom interior path of travel, guestroom curtain/lamp operable
12 controls, guestroom desk, guestroom amenity, guest laundry, and
13 pool facilities of Defendants' QUALITY INN & SUITES establishment.
14 Plaintiff ROBERT MCCARTHY intends to return to Defendants' QUALITY
15 INN & SUITES facilities in the immediate future.

16
17 10. Plaintiff ROBERT MCCARTHY personally experienced difficulty
18 with said access barriers at Defendants' QUALITY INN & SUITES
19 facilities. For example, Plaintiff ROBERT MCCARTY lodged at
20 Defendants' hotel with a reservation that had been made during the
21 week of January 15, 2006. The hotel has two (2) entrances to the
22 parking lot facilities of the hotel, one (1) from Cutting
23 Boulevard and one (1) from a side street. Neither of these two
24 (2) entrances has the required disability signage informing
25 patrons they may be fined or their vehicles may be towed if they
26 unlawfully park in a disabled parking space. The hotel parking
27 lot has one hundred forty-six (146) parking spaces. Within the
28 parking lot there fails to be adequate disabled parking. Of the

1 one hundred forty-six (146) parking spaces, only two (2) parking
2 spaces are marked with blue paint. Neither of these two (2)
3 marked parking spaces have the required disability signage on an
4 upright pole, "Van Accessible" disability signage, nor signage
5 informing patrons they may be fined or their vehicle may be towed
6 if they unlawfully park in a disabled parking space. There also
7 fails to be the required wheel stops at both of these parking
8 spaces to prevent vehicular encroachment onto the walkway. This
9 is important as the walkway affected is the only walkway leading
10 to the hotel lobby and guestrooms. There fails to be the correct
11 number of disabled parking spaces at Defendants' hotel. There
12 fails to be a designated safe and accessible exterior path of
13 travel leading from either public street to the walkway or
14 entrance of the hotel.

15
16 11. Plaintiff ROBERT MCCARTHY went into the QUALITY INN & SUITES
17 lobby and registered as a guest in the hotel. The lobby entrance
18 door fails to have the required disability signage. Further, the
19 registration counter within the lobby is too high to be
20 accessible, as the counter is forty-two inches (42") high. As a
21 result of the high registration counter, Plaintiff ROBERT MCCARTHY
22 had extreme difficulty conducting his transaction and passing
23 items over this counter.

24 12. At the disabled parking space used by Plaintiff ROBERT
25 MCCARTHY a curb ramp encroaches into the access aisle of the
26 designated disabled parking space. As a result, this curb ramp
27 interfered with Plaintiff ROBERT MCCARTHY's use of the access
28 aisle, as Plaintiff ROBERT MCCARTHY had a rental van equipped with

1 a drop-down ramp at the passenger side sliding door. This van
2 ramp overlapped part of the curb ramp, as a direct result of the
3 curb ramp encroachment into the access aisle. Immediately after
4 checking into the hotel, Plaintiff ROBERT MCCARTHY returned to his
5 vehicle to collect his things. Plaintiff ROBERT MCCARTHY placed a
6 cardboard box containing clothing, reading material, and three (3)
7 cups of coffee on his lap. As Plaintiff ROBERT MCCARTHY attempted
8 to roll down and off of the vehicle ramp, Plaintiff ROBERT
9 MCCARTHY turned left onto the curb ramp. Plaintiff ROBERT
10 MCCARTHY did not realize that the right front wheel of his
11 wheelchair was dangling over the edge of the curb ramp or that the
12 big right wheel of his wheelchair was going to miss the curb ramp
13 as he turned his wheelchair to the left. Unexpectedly, Plaintiff
14 ROBERT MCCARTHY's wheelchair flipped to the right off of the curb
15 ramp and Plaintiff ROBERT MCCARTHY fell to the ground onto his
16 right side. Plaintiff ROBERT MCCARTHY's right elbow and lateral
17 knee joint hit the ground forcefully. At first, Plaintiff ROBERT
18 MCCARTHY moved himself and the contents of the box out of the way
19 of the spilled coffee. Then Plaintiff ROBERT MCCARTHY uprighted
20 his wheelchair. A few minutes after falling, a man walked by
21 Plaintiff ROBERT MCCARTHY and asked Plaintiff if he needed help.
22 Plaintiff ROBERT MCCARTHY replied that he was unable to get
23 himself back into his wheelchair without assistance. The man then
24 identified himself as Mr. Guillaum, the manager of Defendants'
25 QUALITY INN & SUITES. Plaintiff ROBERT MCCARTHY is informed and
26 believes and thereon alleges that Mr. Guillaum is French. Also,
27 Plaintiff ROBERT MCCARTHY is informed and believes and thereon
28

1 alleges that the Assistant Manager of Defendant QUALITY INN &
2 SUITES, Sandra, may have seen Plaintiff on the ground. Plaintiff
3 ROBERT MCCARTHY is informed and believes and thereon alleges that
4 Sandra is from Kenya. Later, Assistant Manager Sandra stated to
5 Plaintiff ROBERT MCCARTHY that she was sorry about Plaintiff's
6 fall and injury. Mr. Guillaum and two (2) other men lifted
7 Plaintiff ROBERT MCCARTHY into his wheelchair. Mr. Guillaum
8 escorted Plaintiff ROBERT MCCARTHY to his guestroom and later
9 returned with free replacement coffee for Plaintiff ROBERT
10 MCCARTHY. Plaintiff ROBERT MCCARTHY's right knee hurt terribly
11 throughout the night and the pain disrupted his sleep. The next
12 morning, Plaintiff ROBERT MCCARTHY was in excruciating pain in his
13 right knee as he was sitting in the bottom of the guestroom
14 bathtub and tried to straighten his right leg. This pain
15 persisted for Plaintiff ROBERT MCCARTHY for approximately ten (10)
16 days.

17
18 13. Plaintiff ROBERT MCCARTHY was given Guestroom 114. This
19 guestroom fails to be accessible. At the entrance door to
20 Guestroom 114, Plaintiff ROBERT MCCARTHY was precluded from
21 accessing the very high night latch, as it is mounted sixty inches
22 (60") high or use the peephole on the door, as it is mounted sixty
23 inches (60") high. As a result, the safety and security features
24 available to other patrons were denied to Plaintiff ROBERT
25 MCCARTHY. This greatly concerned Plaintiff ROBERT MCCARTHY as the
26 registration clerk, by the name of Denise, informed Plaintiff
27 ROBERT MCCARTHY to be very careful, as there are a great deal of
28 transients and "pan handlers" in the area. On the morning of

1 January 20, 2006, Plaintiff ROBERT MCCARTHY had extreme difficulty
2 bathing himself. In the bathtub, there fails to be the required
3 bench or seat. There also fails to be the required hand-held
4 sprayer unit. The wall mounted showerhead was directed toward the
5 rear wall and too high for Plaintiff ROBERT MCCARTHY to reach and
6 re-position. The bathtub faucet control valve is very far from
7 the edge of the bathtub, requiring Plaintiff ROBERT MCCARTHY to
8 lean forward and to the side at a very unsafe angle while seated
9 in his wheelchair to operate. The lavatory sink in Guestroom 114
10 fails to have the required insulation on the hot water and
11 drainage pipes. The hand towels are inaccessible in Guestroom 114
12 as they are located on a very high towel rod next to the lavatory
13 sink. This towel rod is mounted sixty-two inches (62") above the
14 floor. The bath towels are also inaccessible, as they are located
15 on a very high rack on the wall above the commode and are fifty-
16 six inches (56") above the floor. Plaintiff ROBERT MCCARTHY had
17 extreme difficulties in transferring to the commode from his
18 wheelchair and from the commode back into his wheelchair, as the
19 commode is a great distance from the sidewall. The distance from
20 the sidewall to the commode is nineteen inches (19"). Also, the
21 commode is too low, as it is only sixteen and one-half inches (16
22 ½") high. Plaintiff ROBERT MCCARTHY had difficulty accessing the
23 commode flush valve on the far side of the commode tank.
24
25 Additionally, in the guestroom bathroom of Guestroom 114,
26 Plaintiff ROBERT MCCARTHY was precluded from reaching and using
27 the only clothing rod, as it is mounted fifty-eight inches (58")
28 above the floor and the only shelf, mounted sixty inches (60")

1 high and directly above the clothing rod. The clothing hook
2 mounted on the interior side of the guestroom bathroom door is
3 also too high to be accessible.

4 14. Within Guestroom 114, a table, chairs and the environmental
5 control (air/heat) unit blocked the interior path of travel,
6 precluding Plaintiff ROBERT MCCARTHY from reaching the controls to
7 open and close the window and curtains. Even if Plaintiff ROBERT
8 MCCARTHY would have been able to access the area in and around the
9 curtain controls, Plaintiff ROBERT MCCARTHY was still precluded
10 from closing the curtains, as the bottom of the vertical curtain
11 controls are too high to be accessible, as the bottom of the
12 controls are more than sixty inches (60") high. As a result,
13 Plaintiff ROBERT MCCARTHY was completely precluded from closing
14 the curtains in his guestroom. Having the curtains constantly
15 open in his guestroom made Plaintiff ROBERT MCCARTHY feel
16 extremely uncomfortable, during both awake and sleeping hours, as
17 strangers were able to view into Plaintiff's guestroom without
18 Plaintiff being aware.

19 15. Within Guestroom 114, the bathroom door fails to open fully,
20 even to a complete ninety-degree (90°) angle. Plaintiff ROBERT
21 MCCARTHY was precluded from accessing the left side of his bed to
22 allow for a transfer from his wheelchair to the bed from this
23 side, as the wall is too close to the bed. This wall is only
24 thirty-one inches (31") from the bed. Plaintiff ROBERT MCCARTHY
25 was not able to use the two (2) wall lamps on each side of his
26 bed, as the wall lamps have small, round switches that require
27 tight grasping and/or twisting of the wrist to operate. The desk
28

1 in Guestroom 114 has insufficient knee clearance, as the clearance
2 is a mere twenty-five and one-half inches (25 ½"). Also, the iron
3 mounted on the wall fails to be accessible, as it is too high
4 mounted at more than sixty-six inches (66") above the floor.

5 16. Defendants' QUALITY INN & SUITES is a two (2) story hotel and
6 has no elevator access to the second floor of the hotel. The
7 guest laundry facilities are located only on the second floor of
8 the hotel. As a result, Plaintiff ROBERT MCCARTHY was precluded
9 from accessing the guest laundry facilities. There also fails to
10 be any disability signage or written directives informing disabled
11 guests how they could use the guest laundry facilities. The
12 outdoor pool was closed for the winter months, however, Plaintiff
13 ROBERT MCCARTHY did see that the metal gate entrance doors are
14 made of vertical metal bars and fail to have the required smooth
15 and uninterrupted surface on the bottom ten inches (10") of the
16 doors that allow the doors to be opened by using a wheelchair
17 footrest without creating a hazard. Also, the pool gate latches
18 were inaccessible, as they are mounted on the exterior side on the
19 top right corner and are more than sixty inches (60") high.

20 Plaintiff ROBERT MCCARTHY did not see the existence of an
21 assistive lifting device to assist disabled hotel guests into and
22 out of the pool, nor any disability signage stating that such a
23 device is available for disabled hotel guests.

24 17. Plaintiff ROBERT MCCARTHY is presently deterred from
25 returning due to his knowledge of the barriers to access that
26 exist at Defendants' QUALITY INN & SUITES facilities.

27 18. Pursuant to federal and state law, Defendants are required to
28

1 remove barriers to their existing facilities. Further, Defendants
2 had actual knowledge of their barrier removal duties under the
3 Americans with Disabilities Act and the Civil Code before January
4 26, 1992. Also, Defendants should have known that individuals
5 with disabilities are not required to give notice to a
6 governmental agency before filing suit alleging Defendants failed
7 to remove architectural barriers.

8 19. Plaintiff believes and herein alleges Defendants' QUALITY
9 INN & SUITES facilities have access violations not directly
10 experienced by Plaintiff ROBERT MCCARTHY which preclude or limit
11 access by other persons with disabilities, including but not
12 limited to violations relating to Space Allowance and Reach
13 Ranges, Accessible Route, Protruding Objects, Ground and Floor
14 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
15 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
16 Doors, Entrances, Drinking Fountains and Water Coolers, Water
17 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
18 Storage, Handrails, Grab Bars, and Controls and Operating
19 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
20 Accordingly, Plaintiff alleges Defendants are required to remove
21 all architectural barriers, known or unknown. Also, Plaintiff
22 alleges Defendants are required to utilize the ADA checklist for
23 Readily Achievable Barrier Removal approved by the United States
24 Department of Justice and created by Adaptive Environments.

25 20. Based on these facts, Plaintiff ROBERT MCCARTHY alleges he
26 was discriminated against each time he patronized Defendants'
27 QUALITY INN & SUITES establishment. Plaintiff ROBERT MCCARTHY was
28

1 extremely upset due to Defendants' conduct. Further, Plaintiff
 2 ROBERT MCCARTHY experienced pain in his legs, knees, back, arms,
 3 elbows shoulders and wrists when he attempted to enter, use, and
 4 exit Defendants' facilities.

5 NOTICE

6 21. Plaintiff is not required to provide notice to the defendants
 7 prior to filing a complaint. *Botosan v. Paul McNally Realty*, 216
 8 F.3d 827, 832 (9th Cir 2000).
 9

10 WHAT CLAIMS IS PLAINTIFF ALLEGING AGAINST EACH NAMED DEFENDANT

11 22. KMAN PARTNERS a.k.a. K.M.A.N. PARTNERS d.b.a. QUALITY INN &
 12 SUITES; ASHOK PATEL, General Partner of KMAN PARTNERS a.k.a.
 13 K.M.A.N. PARTNERS; AMIN-CONCORD, LLC; RICHMOND HOSPITALITY
 14 INVESTMENTS, INC.; ROSHAN INVESTMENTS, LLC; and Does 1 through 10
 15 will be referred to collectively hereinafter as "Defendants."
 16

17 23. Plaintiff avers that the Defendants are liable for the
 18 following claims as alleged below:

19 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

20 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The
 21 Americans With Disabilities Act Of 1990

22 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal Access

23 24. Based on the facts plead at ¶¶ 7 - 20 above and elsewhere in
 24 this complaint, Plaintiff ROBERT MCCARTHY was denied full and
 25 equal access to Defendants' goods, services, facilities,
 26 privileges, advantages, or accommodations. Plaintiff alleges
 27 Defendants are a public accommodation owned, leased and/or
 28 operated by Defendants. Defendants' existing facilities and/or

1 services failed to provide full and equal access to Defendants'
2 facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff
3 ROBERT MCCARTHY was subjected to discrimination in violation of 42
4 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188
5 because Plaintiff ROBERT MCCARTHY was denied equal access to
6 Defendants' existing facilities.

7 25. Plaintiff ROBERT MCCARTHY has physical impairments as alleged
8 in ¶ 8 above because his conditions affect one or more of the
9 following body systems: neurological, musculoskeletal, special
10 sense organs, and/or cardiovascular. Further, Plaintiff ROBERT
11 MCCARTHY's said physical impairments substantially limits one or
12 more of the following major life activities: walking. In
13 addition, Plaintiff ROBERT MCCARTHY cannot perform one or more of
14 the said major life activities in the manner, speed, and duration
15 when compared to the average person. Moreover, Plaintiff ROBERT
16 MCCARTHY has a history of or has been classified as having a
17 physical impairment as required by 42 U.S.C. § 12102(2)(A).
18

19 CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In
20 Such A Manner That The Altered Portions Of The Facility Are
21 Readily Accessible And Usable By Individuals With Disabilities

22 26. Based on the facts plead at ¶¶ 7 - 20 above and elsewhere in
23 this complaint, Plaintiff ROBERT MCCARTHY was denied full and
24 equal access to Defendants' goods, services, facilities,
25 privileges, advantages, or accommodations within a public
26 accommodation owned, leased, and/or operated by Defendants.
27 Defendants altered their facility in a manner that affects or
28 could affect the usability of the facility or a part of the

1 facility after January 26, 1992. In performing the alteration,
2 Defendants failed to make the alteration in such a manner that, to
3 the maximum extent feasible, the altered portions of the facility
4 are readily accessible to and usable by individuals with
5 disabilities, including individuals who use wheelchairs, in
6 violation of 42 U.S.C. §12183(a)(2).

7 27. Additionally, the Defendants undertook an alteration that
8 affects or could affect the usability of or access to an area of
9 the facility containing a primary function after January 26, 1992.
10 Defendants further failed to make the alterations in such a manner
11 that, to the maximum extent feasible, the path of travel to the
12 altered area and the bathrooms, telephones, and drinking fountains
13 serving the altered area, are readily accessible to and usable by
14 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

15 28. Pursuant to 42 U.S.C. §12183(a), this failure to make the
16 alterations in a manner that, to the maximum extent feasible, are
17 readily accessible to and usable by individuals with disabilities
18 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
19 Therefore, Defendants discriminated against Plaintiff in violation
20 of 42 U.S.C. § 12182(a).

21 29. Thus, Plaintiff ROBERT MCCARTHY was subjected to
22 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
23 §12182(a) and 42 U.S.C. §12188 because Plaintiff ROBERT MCCARTHY
24 was denied equal access to Defendants' existing facilities.
25

26 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural
27 Barriers

28 30. Based on the facts plead at ¶¶ 7 - 20 above and elsewhere in

1 this complaint, Plaintiff ROBERT MCCARTHY was denied full and
2 equal access to Defendants' goods, services, facilities,
3 privileges, advantages, or accommodations within a public
4 accommodation owned, leased, and/or operated by Defendants.
5 Defendants failed to remove barriers as required by 42 U.S.C. §
6 12182(a). Plaintiff is informed, believes, and thus alleges that
7 architectural barriers which are structural in nature exist within
8 the following physical elements of Defendants' facilities: Space
9 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
10 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
11 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
12 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
13 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
14 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
15 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
16 Telephones. Title III requires places of public accommodation to
17 remove architectural barriers that are structural in nature to
18 existing facilities. [See, 42 United States Code
19 12182(b)(2)(A)(iv).] Failure to remove such barriers and
20 disparate treatment against a person who has a known association
21 with a person with a disability are forms of discrimination. [See
22 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff ROBERT
23 MCCARTHY was subjected to discrimination in violation of 42 United
24 States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because he
25 was denied equal access to Defendants' existing facilities.
26

27 ///

28 ///

CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
Policies And Procedures

31. Based on the facts plead at ¶¶ 7 - 20 above and elsewhere in this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies and procedures in that they failed to have a scheme, plan, or design to assist Plaintiff and/or others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. § 12188(a). Thus, Plaintiff ROBERT MCCARTHY was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff ROBERT MCCARTHY was denied equal access to Defendants' existing facilities.

32. Based on the facts plead at ¶¶ 7 - 20 above, Claims I, II, and III of Plaintiff's First Cause Of Action above, and the facts elsewhere herein this complaint, Plaintiff will suffer irreparable harm unless Defendants are ordered to remove architectural, non-architectural, and communication barriers at Defendants' public accommodation. Plaintiff alleges that Defendants' discriminatory conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiff and a substantial segment of the disability community. Plaintiff alleges there is a national public interest in requiring accessibility in places of public accommodation. Plaintiff has no adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff desires to return to Defendants' places of business in the immediate future. Accordingly, the Plaintiff alleges that a structural or mandatory injunction is necessary to enjoin

1 compliance with federal civil rights laws enacted for the benefit
2 of individuals with disabilities.

3 33. WHEREFORE, Plaintiff prays for judgment and relief as
4 hereinafter set forth.

5 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
6 CALIFORNIA ACCESSIBILITY LAWS

7 CLAIM I: Denial Of Full And Equal Access

8 34. Based on the facts plead at ¶¶ 7 - 20 above and elsewhere in
9 this complaint, Plaintiff ROBERT MCCARTHY was denied full and
10 equal access to Defendants' goods, services, facilities,
11 privileges, advantages, or accommodations within a public
12 accommodation owned, leased, and/or operated by Defendants as
13 required by Civil Code Sections 54 and 54.1. Defendants' facility
14 violated California's Title 24 Accessible Building Code by failing
15 to provide access to Defendants' facilities due to violations
16 pertaining to the Space Allowance and Reach Ranges, Accessible
17 Route, Protruding Objects, Ground and Floor Surfaces, Parking and
18 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators,
19 Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
20 Drinking Fountains and Water Coolers, Water Closets, Toilet
21 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
22 Handrails, Grab Bars, and Controls and Operating Mechanisms,
23 Alarms, Detectable Warnings, Signage, and Telephones.

24 35. These violations denied Plaintiff ROBERT MCCARTHY full and
25 equal access to Defendants' facility. Thus, Plaintiff ROBERT
26 MCCARTHY was subjected to discrimination pursuant to Civil Code §§
27 51, 52, and 54.1 because Plaintiff ROBERT MCCARTHY was denied
28

1 full, equal and safe access to Defendants' facility, causing
2 severe emotional distress.

3
4 CLAIM II: Failure To Modify Practices, Policies And Procedures

5 36. Based on the facts plead at ¶¶ 7 - 20 above and elsewhere
6 herein this complaint, Defendants failed and refused to provide a
7 reasonable alternative by modifying its practices, policies, and
8 procedures in that they failed to have a scheme, plan, or design
9 to assist Plaintiff and/or others similarly situated in entering
10 and utilizing Defendants' services as required by Civil Code §
11 54.1. Thus, Plaintiff ROBERT MCCARTHY was subjected to
12 discrimination in violation of Civil Code § 54.1.
13

14
15 CLAIM III: Violation Of The Unruh Act

16 37. Based on the facts plead at ¶¶ 7 - 20 above and elsewhere
17 herein this complaint and because Defendants violated the Civil
18 Code § 51 by failing to comply with 42 United States Code §
19 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
20 continue to discriminate against Plaintiff and persons similarly
21 situated in violation of Civil Code §§ 51, 52, and 54.1.

22 38. Based on the facts plead at ¶¶ 7 - 20 above, Claims I, II,
23 and III of Plaintiff's Second Cause Of Action above, and the facts
24 elsewhere herein this complaint, Plaintiff will suffer irreparable
25 harm unless Defendants are ordered to remove architectural, non-
26 architectural, and communication barriers at Defendants' public
27 accommodation. Plaintiff alleges that Defendants' discriminatory
28 conduct is capable of repetition, and this discriminatory

1 repetition adversely impacts Plaintiff and a substantial segment
2 of the disability community. Plaintiff alleges there is a state
3 and national public interest in requiring accessibility in places
4 of public accommodation. Plaintiff has no adequate remedy at law
5 to redress the discriminatory conduct of Defendants. Plaintiff
6 desires to return to Defendants' places of business in the
7 immediate future. Accordingly, the Plaintiff alleges that a
8 structural or mandatory injunction is necessary to enjoin
9 compliance with state civil rights laws enacted for the benefit of
10 individuals with disabilities.

11 39. Wherefore, Plaintiff prays for damages and relief as
12 hereinafter stated.
13

14 Treble Damages Pursuant To Claims I, II, III Under The California
15 Accessibility Laws

16 40. Defendants, each of them respectively, at times prior to and
17 including, the month of January, 2006, and continuing to the
18 present time, knew that persons with physical disabilities were
19 denied their rights of equal access to all portions of this public
20 facility. Despite such knowledge, Defendants, and each of them,
21 failed and refused to take steps to comply with the applicable
22 access statutes; and despite knowledge of the resulting problems
23 and denial of civil rights thereby suffered by Plaintiff and other
24 similarly situated persons with disabilities. Defendants, and
25 each of them, have failed and refused to take action to grant full
26 and equal access to persons with physical disabilities in the
27 respects complained of hereinabove. Defendants, and each of them,
28 have carried out a course of conduct of refusing to respond to, or

1 correct complaints about, denial of disabled access and have
2 refused to comply with their legal obligations to make Defendants'
3 QUALITY INN & SUITES facilities accessible pursuant to the
4 Americans With Disability Act Access Guidelines (ADAAG) and Title
5 24 of the California Code of Regulations (also known as the
6 California Building Code). Such actions and continuing course of
7 conduct by Defendants, and each of them, evidence despicable
8 conduct in conscious disregard of the rights and/or safety of
9 Plaintiff and of other similarly situated persons, justifying an
10 award of treble damages pursuant to sections 52(a) and 54.3(a) of
11 the California Civil Code.
12

13 41. Defendants, and each of their actions have also been
14 oppressive to persons with physical disabilities and of other
15 members of the public, and have evidenced actual or implied
16 malicious intent toward those members of the public, such as
17 Plaintiff and other persons with physical disabilities who have
18 been denied the proper access to which they are entitled by law.
19 Further, Defendants, and each of their, refusals on a day-to-day
20 basis to correct these problems evidence despicable conduct in
21 conscious disregard for the rights of Plaintiff and other members
22 of the public with physical disabilities.

23 42. Plaintiff prays for an award of treble damages against
24 Defendants, and each of them, pursuant to California Civil Code
25 sections 52(a) and 54.3(a), in an amount sufficient to make a more
26 profound example of Defendants and encourage owners, lessors, and
27 operators of other public facilities from willful disregard of the
28 rights of persons with disabilities. Plaintiff does not know the

1 financial worth of Defendants, or the amount of damages sufficient
2 to accomplish the public purposes of section 52(a) of the
3 California Civil Code and section 54.3 of the California Civil
4 Code.

5 43. Wherefore, Plaintiff prays for damages and relief as
6 hereinafter stated.

7
8 THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS- Negligence.

9 44. Based on the facts plead at ¶¶ 7 - 20 above and elsewhere in
10 this complaint, Defendants owed Plaintiff ROBERT MCCARTHY a
11 statutory duty to make their facility accessible and owed
12 Plaintiff ROBERT MCCARTHY a duty to keep him reasonably safe from
13 known dangers and risks of harm. This said duty arises by virtue
14 of legal duties proscribed by various federal and state statutes
15 including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54,
16 54.1 and Title 24 of the California Administrative Code and
17 applicable 1982 Uniform Building Code standards as amended.

18 45. Title III of the ADA mandates removal of architectural
19 barriers and prohibits disability discrimination. As well,
20 Defendants' facility, and other goods, services, and/or facilities
21 provided to the public by Defendants are not accessible to and
22 usable by persons with disabilities as required by Health and
23 Safety Code § 19955 which requires private entities to make their
24 facility accessible before and after remodeling, and to remove
25 architectural barriers.

26 46. Therefore, Defendants engaged in discriminatory conduct in
27 that they failed to comply with known duties under the ADA, ADAAG,
28 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew

1 or should have known that their acts of nonfeasance would cause
2 Plaintiff ROBERT MCCARTHY emotional, bodily and personal injury.
3 Plaintiff ROBERT MCCARTHY further alleges that such conduct was
4 done in reckless disregard of the probability of said conduct
5 causing Plaintiff ROBERT MCCARTHY to suffer bodily or personal
6 injury, anger, embarrassment, depression, anxiety, mortification,
7 humiliation, distress, and fear of physical injury. Plaintiff
8 ROBERT MCCARTHY alleges that such conduct caused him to suffer the
9 injuries of mental and emotional distress, including, but not
10 limited to, anger, embarrassment, depression, anxiety,
11 mortification, humiliation, distress, and fear of physical injury.
12 Further, Plaintiff ROBERT MCCARTHY experienced pain in his legs,
13 knees, back, arms, elbows, shoulders and wrists when he attempted
14 to enter, use, and exit Defendants' facilities. Plaintiff ROBERT
15 MCCARTHY additionally alleges that such conduct caused him to
16 suffer damages as a result of these injuries.
17

18 47. Wherefore, Plaintiff ROBERT MCCARTHY prays for damages and
19 relief as hereinafter stated.
20

21
22 DEMAND FOR JUDGMENT FOR RELIEF:

23 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
24 3281, and 3333;

25 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
26 each and every offense of Civil Code § 51, Title 24 of the
27 California Building Code, ADA, and ADA Accessibility Guidelines;

28 C. In the alternative to the damages pursuant to Cal. Civil

1 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
2 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
3 54.1, Title 24 of the California Building Code, ADA, and ADA
4 Accessibility Guidelines;

5 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
6 Cal. Civil Code § 55. Plaintiff requests this Court enjoin
7 Defendants to remove all architectural barriers in, at, or on
8 their facilities related to the following: Space Allowance and
9 Reach Ranges, Accessible Route, Protruding Objects, Ground and
10 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
11 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
12 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
13 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
14 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
15 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

16 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
17 § 12205, and Cal. Civil Code §§ 1032 and 1033.5;

18 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
19 and 54.3(a);
20
21

22 ///

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28 ///

1 G. A Jury Trial and;

2 H. For such other further relief as the court deems proper.
3

4 Respectfully submitted:
5

6
7 Dated: February 14, 2006

PINNOCK & WAKEFIELD, A.P.C.

8 By: 
9

DAVID C. WAKEFIELD, ESQ.

MICHELLE L. WAKEFIELD, ESQ.
Attorneys for Plaintiff
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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I. (a) PLAINTIFFS

ROBERT MCCARTHY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)David C. Wakefield, Esq., SBN: 185736, Pinnock & Wakefield
3033 5th Ave., #410, San Diego, CA 92103, (619) 858-3671KMAN PARTNERS a.k.a. K.M.A.N. PARTNERS d.b.a. QUALITY INN
& SUITES; ASHOK PATEL, General Partner of KMAN PARTNERS a.k.a.
K.M.A.N. PARTNERS; AMIN-CONCORD, LLC; RICHMOND
HOSPITALITY INVESTMENTS, INC.; ROSHAN INVESTMENTS, LLC;
And DOES 1 THROUGH 10, Inclusive, Defendants.**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT**
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

Alameda

ATTORNEYS (IF KNOWN)

Pinnock & Wakefield

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question
(U.S. Government Not a Party)
☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding
☐ Removed from State Court
☐ Remanded from Appellate Court
☐ Reinstated or Reopened
☐ Transferred from Another district (specify)
☐ Multidistrict Litigation
☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 95 Contract Product Liability <input type="checkbox"/> 96 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT JURISDICTIONAL STATUTES UNLESS DIVERSITY)

U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ ☐ CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

I. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield

DATE 2/15/06